

ENTERED

May 31, 2016

David J. Bradley, Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

MARIBEL AMAYA-ROBLES,	§	
	§	
Petitioner,	§	
	§	CIVIL ACTION NO. H-16-1485
v.	§	(Criminal No. H-00-875-02)
	§	
UNITED STATES OF AMERICA,	§	
	§	
Respondent.	§	

MEMORANDUM OPINION AND ORDER

Petitioner, Maribel Amaya-Robles, has filed a Motion Pursuant to 28 U.S.C. 2255 (F,3) In Light of the Retroactive Effect of Johnson v. United States, 576 U.S. S.Ct. 2015, and Its Progeny, Welch v. United States, U.S. S.Ct. 2016 ("§ 2255 Motion") (Docket Entry No. 356).¹ On March 4, 2011, petitioner pleaded guilty to conspiracy to possess with intent to distribute five kilograms or more of cocaine in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846; and on June 17, 2011, petitioner was sentenced within the advisory Sentencing Guideline range to 262 months in prison and five years of supervised release (Judgment in a Criminal Case, Docket Entry No. 303). On August 8, 2012, Amaya-Robles's appeal was dismissed as frivolous (Judgment, United States Court of Appeals, Docket Entry No. 327).

¹All docket entry references are to Criminal No. H-00-875.

The Court has carefully reviewed Amaya-Robles's motion as required by Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts and concludes that a response to her motion is not required.

Amaya-Robles argues that she is entitled to habeas relief under two recent decisions of the United States Supreme Court. In Johnson v. United States, 135 S. Ct. 2551 (2015), the Court held that the residual clause of the Armed Career Criminal Act (ACCA), 18 U.S.C. § 924(e)(2)(B)(ii), for purposes of sentence enhancement for a felon's possession of a firearm was unconstitutionally vague. In Welch v. United States, 136 S. Ct. 1257 (2016), the Court held that its decision in Johnson announced a substantive rule that applied retroactively on collateral review.

Amaya-Robles's sentence was not based on the ACCA, and the ACCA did not affect her advisory sentencing guideline range. (Nor was her guideline range or her sentence affected by 18 U.S.C. § 16, which defines a "crime of violence.") The court therefore concludes that Amaya-Robles is not entitled to relief under § 2255.

Accordingly, Amaya-Robles's Motion Pursuant to 28 U.S.C. 2255 (F,3) In Light of the Retroactive Effect of Johnson v. United States, 576 U.S. S.Ct. 2015, and Its Progeny, Welch v. United States, U.S. S.Ct. 2016 (Docket Entry No. 356) is **DISMISSED WITH PREJUDICE**.

The Clerk of Court is **ORDERED** to provide a copy of this Memorandum Opinion and Order to Maribel Amaya-Robles and to the United States Attorney for the Southern District of Texas, and to file a copy of this Memorandum Opinion and Order in the corresponding civil action.

SIGNED at Houston, Texas, on this the 31st day of May, 2016.

A handwritten signature in black ink, appearing to read 'S. Lake', is written over a horizontal line.

SIM LAKE
UNITED STATES DISTRICT JUDGE